

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

MARTHA VEST,	:	APPEAL NO. C-130238
Plaintiff-Appellee,	:	TRIAL NO. 12CV-03927
vs.	:	<i>JUDGMENT ENTRY.</i>
DONNA M. ROTH,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Donna Roth appeals the trial court's entry denying her motion to set aside the judgment against her. Because the doctrine of res judicata bars Ms. Roth from asserting arguments that she could have raised in her earlier appeal, we affirm the judgment of the trial court.

Martha Vest filed a complaint in the small claims division of the Hamilton County Municipal Court, alleging that Donna Roth had painted a fence on Ms. Vest's property without permission. The magistrate found in favor of Ms. Vest and awarded a judgment of \$855 plus interest, and the trial court adopted the magistrate's decision. Ms. Roth filed a motion to set aside the judgment, which was denied by the trial court. Following the denial, Ms. Roth filed a notice of appeal with this court. That appeal was later dismissed by Ms. Roth. Ms. Roth filed a second motion to set aside the judgment, which was again denied by the trial court. Ms. Roth now appeals that denial.

We recast the assignment of error in Ms. Roth's pro se brief to reflect her assertion that the court erred in denying her motion to set aside its judgment. The second motion to set aside the judgment, which is the focus of this appeal, raised the same arguments asserted in Ms. Roth's earlier motion. Because the arguments raised in the second motion and in this appeal could have been raised in Ms. Roth's first appeal, she is barred by res judicata from raising them. *See Marino v. Painter*, 11th Dist. Trumbull No. 2003-T-0133, 2004-Ohio-6033, ¶ 30. The sole assignment of error is overruled, and the judgment of the trial court is affirmed.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., HILDEBRANDT and DEWINE, JJ.

To the clerk:

Enter upon the journal of the court on December 11, 2013

per order of the court _____.
Presiding Judge